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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

February 4, 1998

AO-98-03

Jacqueline M. Pomfret
Associate Director, Department of Legislation
Massachusetts Nurses Association
340 Turnpike Street
Canton, MA 02021-2711

Re: Fundraising options for Association's PAC

Dear Ms. Pomfret:

This letter is in response to your request for an advisory opinion.

The Association's political action committee, NursePLAN, would like to raise funds through membership dues paid to the Association. You have listed three possible ways this could be done, and have asked for this office's opinion regarding each option.

Each option is evaluated below after a general discussion of the relevant sections of the campaign finance law and regulations.

Discussion

This office has consistently advised that an association may, subject to restrictions, provide administrative services for a PAC. The PAC must keep records and report the receipt of all contributions from the Association, in accordance with M.G.L. c. 55, §§ 2, 5 and 18. In addition, an association comprised of business or professional corporations must be reimbursed for the fair market value of all costs incurred by the association because the campaign finance law prohibits such associations from contributing anything of value to a PAC.¹ See M.G.L. c. 55, § 8, AO-84-12 (to the Massachusetts Nurses Association) and AO-88-28. Also, an association which receives financial support from state or local government sources may not use such funds to benefit a PAC (or any candidate or political committee). See AO-89-21

¹ Such an association would also be prohibited from contributing anything of value to candidates, candidate committees, political party committees, and people's committees.

(Massachusetts Municipal Association may not provide such services unless municipal funds are segregated from other funds in association's treasury and are not used for that purpose). Assuming the Association does not receive corporate or public funds, it may therefore make in-kind contributions to a PAC in the form of staff time, office space, stationery, office supplies, or office equipment such as telephones, copiers, fax machines, computers and word processors.

Making such administrative support available for a PAC would not subject the Association to the limitations or reporting requirements of the campaign finance law if total expenditures by the Association to support candidates, PACs or party committees are "incidental" when compared to overall expenditures. As discussed in more detail in interpretive bulletin IB-88-01 and my October 30, 1997 advisory opinion (AO-97-21) to Alan J. McDonald, organizations which make expenditures, but do not solicit or receive funds, to support or oppose candidates, PACs or party committees are not treated as political committees unless the expenditures are "more than incidental." Expenditures are more than incidental if they exceed, in the aggregate, in a calendar year, either \$15,000 or 10% of such organization's gross revenues for the previous calendar year, whichever is less. See IB-88-01. I assume, for purposes of considering the options presented in your letter, that the total annual value of the administrative support (when considered together with other contributions or expenditures made by the Association to support or oppose candidates or PACs), is "incidental" to the Association's total expenditures.

In addition, I assume that a member's total contributions, via the dues check off, to the PAC during any calendar year will be \$50 or less. See M.G.L. c. 55, § 9, which requires contributions of more than \$50 during a calendar year to be by check.

Finally, I note that contributions to the PAC cannot be attributed to individual members if the Association, not members, determines that a portion of dues payments received from members should be given to the PAC. If the Association makes the determination to give funds to a PAC, the Association, and not individual members, has made a contribution.

With this framework in mind, the options listed in your letter may be evaluated as follows:

Option 1

Members would have the option to increase dues by a certain amount per year. Members would indicate this choice by checking a block on a membership form. If the block is not checked, dues will not be increased. If the block is checked, the increased amount will be given to the PAC. Once a month the Association would submit a check to NursePLAN and keep information regarding contributors on file.

Response

This option would comply with the campaign finance law. The contributions which are made through voluntary members' dues check-off would be considered individual contributions to the PAC from members. The administrative cost of processing the system would be considered an in-kind contribution from the Association, if the Association is not reimbursed by the PAC. Total contributions from individual

members would be subject to the \$500 limit on such contributions as well as other limits specified in chapter 55.

The treasurer of NursePLAN is required by the campaign finance law to “keep and preserve detailed accounts” regarding all contributions to the PAC. See M.G.L. c. 55, §§2 and 5. In addition, the treasurer is required to report the name and address of all contributors of more than \$50 during a calendar year. See M.G.L. c. 55, s. 18. Therefore, although the Association may, if it chooses, keep information regarding contributors on file, it must also provide this information to NursePLAN.

Option 2

Members would have the option not to contribute to NursePLAN. If a member does not express a preference by checking a block on a membership form, the member’s dues payment to the Association would automatically be increased by a certain amount and the additional amount paid by the member will be forwarded by the Association to NursePLAN.

Response

This option would not comply with the campaign finance law.

“Contributions” are defined, in part, as money or other things of value given to a candidate or committee “for the purpose of influencing the nomination or election” of a candidate or candidates. See M.G.L. c. 55, s. 1 (emphasis added). An affirmative action must be taken to make a contribution; it may not be made by default. A contribution may not be made by a person without the person agreeing to make the contribution, knowing the amount of the contribution, and knowing the recipient of the contribution. In addition, when an individual makes a contribution by dues check-off (or otherwise) it must be clear to the recipient of the contribution that the contribution is “based on the contributor’s expressed intent.” See AO-95-27 (in which the office stated that a person may contribute to two PACs using one check if the contributor’s intent regarding the allocation of funds between the PACs is clearly indicated on the check or in a written document provided with the contributions). See also M.G.L. c. 55, s. 10 and 970 CMR 1.04(1)(3) and (4)(requiring contributions to be attributable to the true source of the funds).

Option 3

The collective bargaining agreement would specify that members have the option of contributing to NursePLAN by adding an additional voluntary payment designated specifically for the PAC.

Response

This option would comply with the campaign finance law. As with option 1, members could choose to affirmatively make contributions to the PAC and if they do not want their money to go to the PAC, no contribution would be made. It makes no difference that the system’s check-off option is

Jacqueline M. Promfet
February 4, 1998
Page 4

mandated by a collective bargaining agreement. The administrative cost of processing the system would be an in-kind contribution from the Association to the PAC, if the Association is not reimbursed by the PAC. Total contributions from individuals would be subject to the \$500 limit on such contributions as well as other limits specified in chapter 55.

The treasurer of NursePLAN would be required to keep accounts regarding all contributions to the PAC and report contributions as specified by the campaign finance law. See M.G.L. c. 55, §§2, 5 and 18.

This opinion is solely within the context of the campaign finance law and is provided on the basis of representations in your letters and conversations with OCPF staff.

Please contact us if you have further questions regarding the campaign finance law.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan", followed by a horizontal line.

Michael J. Sullivan
Director

MJS/cp